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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,185

04/13/2004

Valentin Opreescu-Surcobe

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22917 7590 12/19/2006

MOTOROLA, INC.

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SCHAUMBURG, IL 60196

EXAMINER

CAI, WAYNE HUU

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

12/19/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/823,185

Applicant(s)

OPRESCU-SURCOBE ET AL.

Examiner

Wayne Cai

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,6-9,12-14,17 and 27-38.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attachment Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


DUC M. NGUYEN
SUPERVISORY PATENT EXAMINER
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ADVISORY ACTION

Response to Arguments

Applicant's arguments filed November 27, 2006 have been fully considered but they are not persuasive.

The Applicant argues at the first full paragraph on page 9 of Remarks that Chen fails to teach or suggest "sending by the BS a short data acknowledgment message to **the network equipment** (from which it received a short data delivery message) indicating whether a response from the MS was received for the signaling of the MS, by the BS in response to the short data delivery message." The Examiner respectfully disagrees with the arguments above because the claimed feature is clearly taught or suggested by Chen at paragraph 0053, and figure 4, message 426.

Chen clearly states in paragraph 0053 that the BSC may send an A9-update-A8 message 426 to the PCF **to indicate successful transmission of the SDB to the mobile**. In other words, Chen teaches or suggests the base station (i.e., figure 4, BSC of Chen) sends a short data acknowledgement message (i.e., an A9-update-A8 message of Chen) to the network equipment (i.e., packet control function (PCF) of Chen) indicating whether a response from the MS was received for the signaling of the MS by the BS (i.e., indicating successful transmission of the SDB to the mobile.)

The Applicant further argues that the message 426 of Chen does not indicate whether a response from the MS was received for the signaling of the MS by the BS. However, based on the explanation above, it is clear to one skilled in the art that the

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message 426 indicates the signaling of the successful transmission of the SDB to the mobile, which also reads on the claimed limitation.

The Applicant then argues that the amended claims recite that the messaging and the messaging responses monitored **do not specify a presence state of the MS** or a presence state change by the MS. The Applicant then states that Magee teaches away from this portion because **Magee specifies its location**. The Examiner respectfully notes that it is the Examiner's position to give the broadest reasonable interpretation of the claim language. Although, claims recite "do not specify a presence state of the MS", but one skilled in the art would conceptualize "presence state" as an on state, power up state, etc., and not necessary the particular location that the MS is in as the present state. Therefore, Magee specifies its location, but Magee does not specify the present state as claimed. In turn, the Examiner relied on Blackett for the teaching of "present state" as recited in claims.

With further regard to arguments with respect to the teaching of Blackett, the Examiner respectfully notes that Blackett teaches or suggests two types of events can trigger a presence change: 1) if the client or user detects or has an event which may alter its status or presence then the presence or status is re-determined and 2) if a pre-determined time has elapsed without any event then the presence or status is determined again (see paragraph 0133 of Blackett). Thus, it is clear to one skilled in the art that based on the monitoring (i.e., by having an event, or not having an event for a period of time), the system then infers that the presence state has changed. Hence, the rejections are still proper.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Cai whose telephone number is (571) 272-7798. The examiner can normally be reached on Monday - Thursday from 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on (571) 272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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